

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION

KNIGHTEN MACHINE AND SERVICE, INC. §
d/b/a KNIGHTEN INDUSTRIES, INC. §

Plaintiff, §

v. §

AQUA TERRA PERMIAN, LLC, §

Defendant. §

CASE NUMBER: 5:21-cv-00121

DEFENDANT AQUA TERRA PERMIAN, LLC'S NOTICE OF REMOVAL

COMES NOW, Aqua Terra Permian, LLC and files this, its Notice of Removal pursuant to 28 U.S.C. § 1446(a) and respectfully shows as follows:

I. Introduction

1. Plaintiff Knighten Machine and Services, Inc. d/b/a Knighten Industries, Inc. is a Texas corporation ("Knighten").

2. Defendant is Aqua Terra Permian, LLC a Delaware limited liability company ("ATP").

3. ATP was served with Knighten's filed Petition on January 6, 2021 in Cause Number CV-57288 pending in the 385th Judicial District Court of Midland County, Texas (the "State Court Lawsuit"). ATP files this Notice of Removal within the 30-day time period required

by 28 U.S.C. § 1446(b); *Bd. Of Regents of Univ. Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007).

II. Basis for Removal

4. Removal to Federal District Court for the Western District of Texas is proper because Knighten is seeking an amount in excess of \$75,000 excluding costs and fees, and there is complete diversity between the parties. 28 U.S.C. § 1332(a). Knighten is a Texas corporation with its principal place of business (nerve center) in Texas; therefore, Knighten is a Texas citizen. ATP is a Delaware limited liability company. Unlike corporations and individuals, the citizenship of limited liability companies and limited partnerships is not determined by their residence, place of incorporation, or principal place of business. The citizenship of limited liability companies and limited partnerships is determined by the citizenship of the members and partners of each entity. *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008).

5. ATP's sole member is Aqua Terra Intermediate Holdco LP an Alberta, Canada limited partnership.

6. Aqua Terra Intermediate Holdco LP's partners are Aqua Terra Intermediate Holdco GP ULC an Alberta, Canada unlimited liability corporation and Aqua Terra US Holdings, LLC a Delaware limited liability company. Aqua Terra Intermediate Holdco GP ULC does not maintain an office or place of business in Texas. As a result, ATP is a citizen of Canada for diversity purposes under a 28 U.S.C. § 1332 analysis.

7. Aqua Terra US Holdings, LLC's sole member is Aqua Terra Water Management, LP a Delaware limited partnership.

8. Aqua Terra Water Management, LP's partners are Aqua Terra Water Management, LLC a Delaware limited liability company and Aqua Terra Holdings, LP a Delaware limited partnership.

9. Aqua Terra Water Management, LLC's sole member is Aqua Terra Holdings, LP a Delaware limited partnership.

10. Aqua Terra Holdings, LP's partners are Aqua Terra Holdings GP, LLC a Delaware limited liability company and Aqua Terra Investors, LP a Cayman Islands limited partnership.

11. Aqua Terra Holdings GP, LLC's sole member is Aqua Terra Investors, LP.

12. Aqua Terra Investors, LP's partners include Aqua Terra GP, Ltd. a Caymen Island limited partnership; Bregal Partners, LP a Jersey (Channel Islands) limited partnership; Deerpath Partners Holdings Corporation AIF-1, LLC a Delaware limited liability company; Deerpath Partners Holdings Corporation AIF-2, LLC a Delaware limited liability company; and Pondfield Capital Advantage, LP a Delaware limited partnership.

13. Aqua Terra GP, Ltd.'s sole partner is Bregal Partners, LP.

14. Bregal Partners, LP's partners are Bregal Investments III, LP a Jersey (Channel Islands) limited partnership and Bregal North American General Partner Jersey Limited, a Jersey (Channel Islands) corporation. Bregal North American General Partner Jersey Limited does not maintain an office or place of business in Texas. As a result, ATP is also a citizen of Jersey (Channel Islands) for diversity purposes under a 28 U.S.C. § 1332 analysis.

15. There are no members of Deerpath Partners Holdings Corporation AIF-1, LLC or Deerpath Partners Holdings Corporation AIF-2, LLC a Delaware limited liability company that are Texas citizens or maintain a principal place of business in Texas. Likewise, there are no

partners of Pondfield Capital Advantage, LP that are citizens of Texas or that maintain a principal place of business in Texas

16. Bregal Investments III, LP's partners are Bregal Luxembourg SARL, a Luxembourg corporation and Bregal Jersey Limited, a Jersey (Channel Islands) corporation. Bregal Jersey Limited does not maintain an office or place of business in Texas. As a result, ATP is also a citizen of Luxembourg for diversity purposes under a 28 U.S.C. § 1332 analysis.

17. Pursuant to the Fifth Circuit Court of Appeals' holding in *Harvey* ATP is a citizen of Canada, Jersey (Channel Islands), and Luxembourg for diversity purposes. As such, removal is proper as there is complete diversity between ATP and Knighten. 28 U.S.C. § 1332(a). Removal is also proper pursuant to 28 U.S.C. § 1332(a)(2) as this Court has alienage jurisdiction due to ATP's deemed citizenship status under a diversity analysis.

18. Copies of all applicable process, pleadings, and orders served on ATP or served by ATP in the underlying State Court Lawsuit are attached to this Notice as required by 28 U.S.C. § 1446(a).

19. Venue is proper in the Western District of Texas, Midland Division pursuant to 28 U.S.C. § 1441(a) because the State Court Lawsuit was pending in Midland County, Texas which is a county in the Federal Western District of Texas, Midland Division.

20. ATP will promptly file a copy of this Notice with the clerk of the Texas District Court in Midland County, Texas where this suit has been pending.

WHEREFORE, for the forgoing reasons, ATP requests that this Court remove the State Court Lawsuit to the United States District Court for the Western District of Texas, Midland Division and for any further relief that ATP is justly entitled.

Respectfully submitted,

BY: /s/ H. Brandon Jones

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this Notice of Removal has been served in accordance with the Federal Rules of Civil Procedure via email and first-class mail, postage paid on this 8th day of February 2021 to:

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/s/ H. Brandon Jones

H. Brandon Jones